

## CHAPTER 5:

# Succeeding Lease, Superseding Lease

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## 1. Overview

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This chapter defines succeeding and superseding leases, discusses the acquisition process requirements for them, and explains the available lease model that is specifically tailored to accommodate them.

GSAM Subpart 570.4 provides the authority to enable the Government to run an advertisement, conduct market research, perform a cost-benefit analysis, and, if justified, prepare a sole source justification to negotiate a lease directly with the present lessor. This approach eliminates the need for the Government to negotiate with all offerors in situations where the acquisition cost is above the simplified acquisition threshold and the Government has determined through a conducted cost benefit analysis (570.402-1(b)(2)) that it cannot expect to recover relocation costs and duplication of costs through competition. This approach also saves the private sector the time and expense associated with developing, submitting, and negotiating proposals in those instances where the Government cannot expect to recover such costs through competition.

The authority for acquiring succeeding and superseding leases can be found in GSAM Subpart 570.4. Leasing Specialists may use this authority to acquire a succeeding lease, used when a “continued occupancy” is sought; or for a superseding lease, used to replace an existing lease when major modifications to the space are required causing material changes to the lease, or when favorable market conditions allow the Government to renegotiate favorable lease terms over a new lease period. Both succeeding and superseding leases establish new terms and conditions and result in a new lease contract with an existing Lessor. The GSAM definition was expanded in its application to distinguish between when to use a succeeding versus a superseding lease; a succeeding lease is one that begins upon expiration of an existing lease for space in the same building, whereas a superseding lease replaces an existing lease before it expires.

Succeeding and superseding leases are distinguished from other lease actions to fulfill a continuing need for space, such as a replacing lease.

- In a replacing lease, PBS seeks full and open competitive offers from the market to replace an expiring lease. Preliminary research indicates that multiple sources may be able to satisfy the agency requirements within the delineated area and that relocation and duplication costs could be recoverable over the term of the lease. Therefore, PBS advertises for interested parties to submit their properties for consideration to be viewed on a market survey. Several offers may be solicited and received, or the existing Lessor’s offer may be the only one received.
- The advantage of completing a succeeding lease as opposed to an extension is that all lease provisions are brought up to current standards to protect the Government’s long-term occupancy; in addition, succeeding leases are typically for more than 24 months. However, be aware that the private real estate sector often uses the term “extension” to mean what in PBS terminology is a succeeding lease.

In contrast, succeeding or superseding lease actions are distinguished by the following circumstances:

- No potential acceptable locations (other than the existing Lessor) have been identified through a FedBizOpps (FBO) posting, or market survey.

OR

- The potential acceptable locations and the cost-benefit analysis indicate that the Government cannot expect to recover relocation and duplication of costs through competition.

In instances where potentially acceptable locations are identified, the Justification for Other Than Full and Open Competition (Justification) must include a cost-benefit analysis. GSA must document the absence of acceptable locations or a finding that the Government cannot expect to recover costs in a Justification to negotiate directly with the current Lessor.

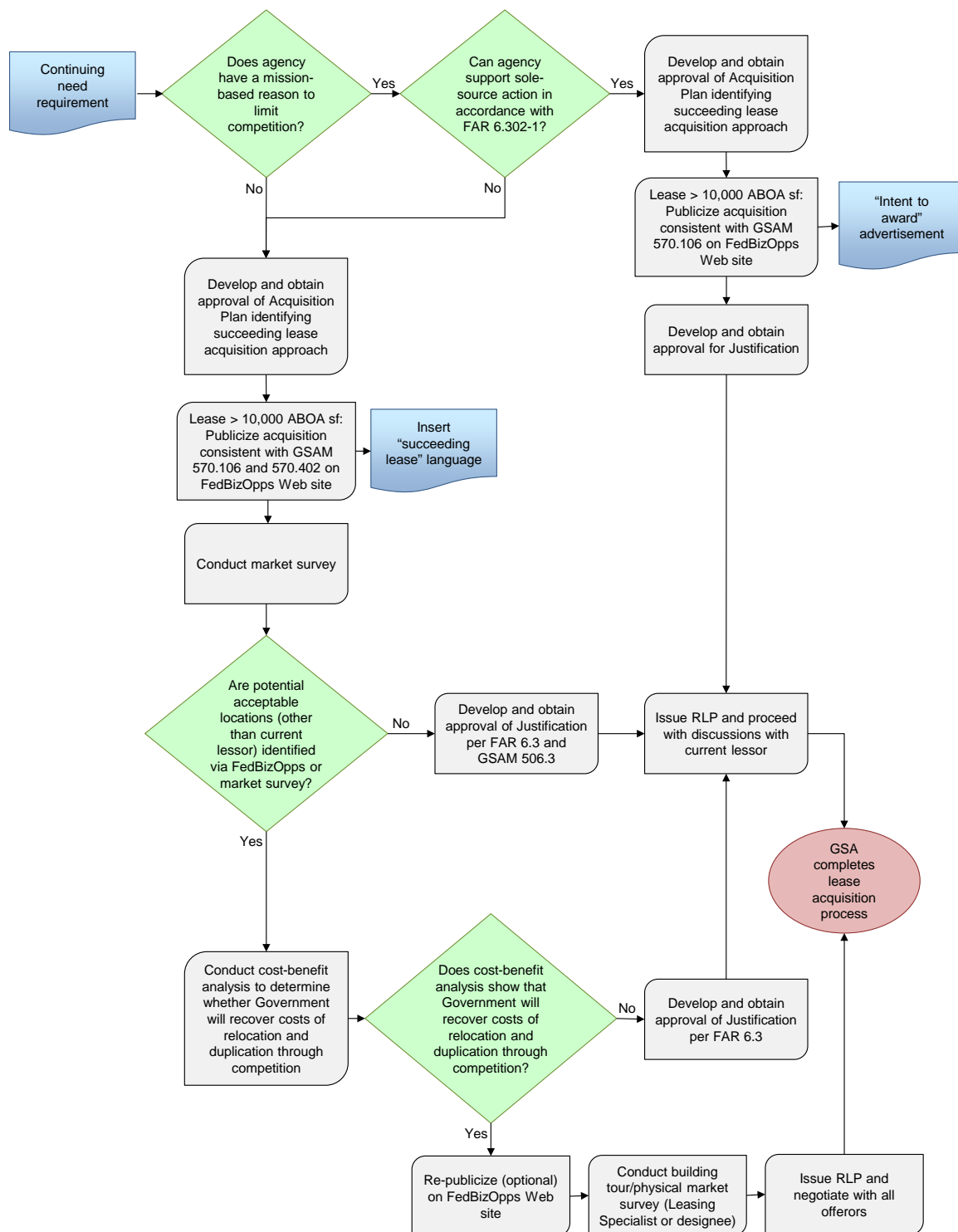
Succeeding and superseding leases are replacing actions at an existing location. Both situations require a Justification to support a sole-source action when there is only one responsible source that will satisfy agency requirements. In instances where potentially acceptable locations are identified, the Justification must include a cost-benefit analysis to reflect an estimate of the cost to the Government that would be duplicated and how the estimate was derived.

Although succeeding and superseding lease procurements have some marked distinctions from new and replacing lease procurements, many more similarities exist than differences. This chapter highlights primarily the differences. Refer to Chapter 2, New or Replacing Lease, for a comprehensive discussion of the new and replacing lease procurement process, and supplement that information with the guidance in this chapter for a succeeding lease.

The flow chart on the next page shows the process for succeeding leases. Subsequent sections of this chapter explain these steps in more detail.

Key to flow chart terminology:

- GSAM: General Services Administration Acquisition Manual.
- FAR: Federal Acquisition Regulation.
- Justification: Justification for Other than Full and Open Competition.
- RLP: Request for Lease Proposals package.

*Succeeding Lease Process*

## 2. Definitions and Applicability

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### a. Succeeding Lease

A succeeding lease secures long- or intermediate-term continuing occupancy at the current premises at the end of a lease term (or the end of an extension) without a break in tenancy. To pursue a succeeding lease, unless the agency has a mission-based reason to stay in place, the Leasing Specialist must investigate the availability of alternative locations; then, if alternative locations are found, the Leasing Specialist must demonstrate the cost advantages of staying in place through a cost-benefit analysis. As explained later in this chapter, the succeeding lease process can be accomplished using a number of available lease acquisition “models,” including one specifically designed for succeeding/superseding leases.

The Leasing Specialist must understand that if a cost-benefit analysis is required but it does not support a Justification under the Competition in Contracting Act (CICA), then a competitive new or replacing lease must be pursued. The Leasing Specialist must update PBS systems to indicate that the lease action is not a succeeding/superseding lease but a new/replacing lease approach if that is the case.

### b. Superseding Lease

A superseding lease replaces an existing lease before its expiration. The existing lease is terminated simultaneously, effective with the commencement of the superseding lease. Generally a superseding lease is used to significantly change the provisions of an existing lease, usually to the point where additional term years are added, the rent is significantly changed, and the amount or configuration of the space is significantly altered. A new tenant improvement allowance for minor alterations is typical; however, if changes are significant enough to warrant a new full tenant improvement allowance, then consider using the standard lease model.

The main consequence of using a superseding lease as opposed to a Lease Amendment is that all lease provisions are brought up to current standards. The Leasing Specialist must understand that if the cost-benefit analysis does not support a Justification under CICA, then a competitive new or replacing lease must be pursued. The potential cost of remaining liability on the existing lease (in terms of net present value or a buyout) will play a major role in the superseding cost-benefit analysis, unless a backfill candidate has been identified.

As a practical matter, superseding leases are most often used when the space is either being expanded or a reduction in rent is being obtained in exchange for a longer firm-term commitment by the Government.

### Examples of Potential Superseding Lease Scenarios

Not every trigger event—such as a change in the tenant agency’s square footage requirement or a space alteration—will necessitate a superseding lease. Space expansions are accommodated by Lease Amendments if they are determined to be within the general scope of the lease. However, space expansions outside the general scope of the lease may be considered for a superseding lease if the agency has a mission-related need for the personnel to be co-located, or there are other justifiable reasons for the expansion. For determination of scope, the Leasing Specialist must consider the factors discussed in detail in Chapter 6, Change in Square Footage—Expansion and Reduction and must consult with the Office of Regional Counsel.

Likewise, minor space alterations may fall within the scope of the lease; see Chapter 8, Alterations in Leased Space.

The Government may consider executing a superseding lease to replace an existing lease when various factors make it advantageous to do so. The following are examples of circumstances that may support a superseding lease. In all circumstances, a Justification is required for superseding leases.

#### Significant Changes in Customer Requirements

A tenant agency may need numerous or detailed modifications to a space that would cause complications or substantially change the existing lease. For example, the agency's needs or organizational goals have changed significantly or it may need to co-locate or consolidate an affiliated agency or organization with itself under the same roof to meet evolving mission needs; and it might need more space to accomplish that. The agency may need the expanded space or extensive alterations now, 2 or 3 years before expiration of its current lease. A superseding lease can solve the space problem and also avert the need to redo the lease again in a couple of years, as well as provide enough additional term to allow a more tolerable amortization of any tenant improvement allowance.

#### Opportunities for Economic Advantage

In some cases, a superseding lease could take advantage of favorable market conditions to bring considerable financial savings to the Government. An early extension of an existing lease through a superseding lease would ONLY be an acceptable approach in the case when the lessor is actually offering a rental rate lower than the existing rate for both the remaining term and the additional term. The fact that the lessor is offering an attractive rate to "blend" with the old rate is not necessarily a benefit to the Government, if that "blending" results in an immediate price increase to the tenants.

The "blend and extend" concept oftentimes used in the private sector can be misleading, especially when the Lessor can offer a slightly below current market rate for the extension term that is higher than the existing rate, blend them, and get both an immediate price increase and additional term without competing. Unless the price goes down immediately, it would be hard to prove that competition at the end of the existing term would not produce an overall better deal for the Government. This scenario violates the intent of the Competition in Contracting Act, the purpose of which is "to increase the number of competitors and to increase savings through lower, more competitive pricing."

Identifying such opportunities requires analyzing the terms of the existing lease inventory against market conditions to find potential targets. More favorable rental rates may be available now than when the lease began, so executing a superseding lease now can lock in more beneficial terms. Leasing Specialists are encouraged to use the Succeeding/Superseding Model RLP and Lease templates for such scenarios, which can result in renegotiated rent payments lower than those for the existing lease in exchange for a longer firm-term commitment.

#### Administrative Simplification

A superseding lease can be used to consolidate and reduce the number of leases that must be administered for a certain location, or for a particular customer agency. This approach can reduce the cost of administering the leases and make it easier to manage the lease workload, not only for the Government but also the private Lessor. This rationale may be especially compelling in scenarios where multiple leases are spread out over highly dispersed or remote locations, and

where distances pose a significant challenge in terms of the time and cost of travel and coordination.

In contrast, where space has been backfilled, and now is occupied by two agencies with vastly different needs, this authority could be used to split the lease into two leases. The rationale is the same; this approach seeks to reduce the cost of administering the lease and related occupancy agreements. No new space is being procured, so CICA requirements are not triggered. However, more term could be added to the backfill space in exchange for tenant improvements and justified similarly to a succeeding lease. Given the complexity associated with this scenario, CICA provisions would be triggered, and a potential justification would be required.

The coordinating requirements and timelines for executing a single-tenant superseding lease grow significantly when attempting to bring together the needs of multiple tenant agencies. The Leasing Specialist must carefully consider whether:

- the data, tools, and time are sufficient to conduct a thorough and defensible up-front analysis;
- the geographic location and travel issues are compelling;
- the opportunity offers clear advantages;
- the loss of flexibility for the individual tenants or locations is outweighed by the long-term benefits;
- the superseding lease can effectively resolve and harmonize the requirements of different tenant agencies;
- the superseding lease will increase the cost-efficiency of the leases; and
- The consolidated superseding lease will reduce or magnify administrative difficulties, or opportunities for OA rent bill errors.

### 3. Succeeding/Superseding Lease Model

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GSAM 570.402 ("Succeeding leases") establishes the regulatory framework for negotiating sole-source succeeding leases. Lease reform introduced the Succeeding/Superseding Lease Model in April 2011, which aligns with that framework while offering additional tools and templates to optimize the process. It uses a specialized approach to obtaining an offer through the use of an RLP, Lease, and GSA Form 1364 specifically tailored to a succeeding lease action.

This model assumes that the existing premises meets or substantially meets the tenant agency's on-going requirements so that only minimal, if any, alterations are necessary and it takes a turnkey approach to defining any new required improvements. In addition, the RLP and lease templates associated with this model clearly communicate the Government's intent to negotiate a succeeding lease, leading to a faster, more streamlined approach to negotiations. However, from a price standpoint, it is important to be aware of the impact to the Government's negotiating leverage when revealing its intent to stay in place.

## a. Key Features of Succeeding/Superseding Lease Model

The following are among the key features of this model:

- *Acquisition Planning Analysis.* Information required for the analytical aspect of acquisition planning—such as market data, property management feedback, housing plans, etc.—is gathered early in the process. A model-specific decision tool—the Succeeding/Superseding Decision Tool—offers fully automated functionality to assess current lease information (rates, termination rights, renewal options, and so on) as well as comparative market information derived from REXUS, CoStar, and REIS. The tool also incorporates relocation costs—moving, IT, furniture, and tenant improvements (TI)—into its cost-benefit analysis.
- *Request for Lease Proposals and Lease.* The succeeding/superseding RLP and lease provide for accepting the current location's space as-is as long as it meets (or the owner agrees to make modifications in order to meet) current life safety, seismic safety, security, Energy Star/cost-effective energy efficiency improvements, and accessibility standards. Under both a succeeding and superseding lease, the upgrading of technical requirements must be completed by the beginning of any additional term. Any TI, such as paint and carpet replacement, must be identified in the RLP and priced in the rental rate. Since this is a turnkey model, paragraphs referring to a TI allowance have been removed. Also, paragraphs that would apply only when seeking alternative locations or competitive offers, such as those referring to location or present value evaluation, have been removed from the model. Additionally, the list of submittals required as part of the offer has been reduced.
- *GSA Form 1364D, Proposal to Lease Space.* This form, to be used in conjunction with the model's RLP and lease templates, is tailored for succeeding lease actions and must be used for this model. The Leasing Specialist fills out the current lease information before sending it to the current Lessor for completion of the proposed offer information.
- *Market Survey Analysis and Negotiation Objectives.* This available document template combines the results of the market research with the negotiation objectives.

## b. Selecting the Most Advantageous Model

As stated previously, Leasing Specialists should understand that various models (Simplified, Streamlined, or Standard models) can accommodate succeeding lease procurement.

One option is to use the specific Succeeding/Superseding Lease Model, which takes a turnkey approach to defining TI and takes into account PBS's intent to negotiate with the current Lessor on a sole-source basis.

In some cases, however, it may be prudent to use other model documents to secure a sole-source succeeding lease. For example, if the anticipated build-out warrants including a TI allowance and full specifications, or if disclosure to the current Lessor of PBS's intent to negotiate a sole-source lease would impose undue financial risk on the Government, the Leasing Specialist should instead use the Standard Lease Model documents. Also, for a superseding lease addressing significant changes in agency requirements, which typically involve major alterations, the Standard Model templates should be used.

## 4. Process Rationale

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As discussed under Part 1 of Chapter 2 of this Desk Guide, CICA requires agencies to promote and seek full and open competition in soliciting offers and awarding Government contracts. CICA recognizes seven conditions that allow exceptions to this requirement. The exception most relevant to leasing is that there is “only one responsible source” and no other supplies or services “will satisfy” agency requirements (41 U.S.C. 3304(a) (1)). It is under this exception that PBS may negotiate with the current Lessor and secure a succeeding lease. While the GSAM guidance on managing expiring leases is clear, some Leasing Specialists may not be aware of these authorities.

Leasing Specialists must be aware that a Justification is not supportable based on:

- A lack of advance planning by the client agency; or
- Concerns related to the amount of funds available to the agency.

## 5. Timing and Leverage

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It is essential to begin considering the potential for a succeeding lease 18–24 months (or 36 months for a prospectus lease) before the expiration of the current lease, depending on factors such as the size and complexity of the lease. This lead time is necessary to allow a thorough analysis of:

- the agency’s long term space needs;
- the current lease terms;
- prevailing market conditions;
- potential points of leverage in PBS’s negotiation position with respect to the incumbent Lessor; and
- the relative costs and benefits to the tenant agency of staying in place versus moving to a new location.

Failing to allow enough time to investigate strategic options can impose significant costs on the Government that otherwise might have been avoidable. As the expiration date approaches, the Lessor may begin to regard the Government as a captive tenant unlikely to be lost to a competitor, and the Lessor will enjoy an increasingly stronger negotiating position regarding rental concessions or other terms.

## 6. Acquisition Planning Analysis

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This section discusses some of the factors that the Leasing Specialist must consider in performing an analytical review to decide whether to pursue a succeeding lease as an option.

### a. Issues to Consider

As part of due diligence, the Leasing Specialist must consider the following issues before deciding to pursue a succeeding lease:

#### Agency Requirements

- Have the agency's requirements changed significantly? If so, can the existing location meet these new requirements? General requirements for a succeeding lease are largely the same as for a new or replacing lease action, but tenant improvement costs can be significantly less. If the agency is contemplating **major** changes in square footage or alterations, then the Standard model and full and open competition could be more appropriate.
- Is this an opportunity for the agency to meet its requirements with a reduced space footprint? (Note that a succeeding lease can accommodate a reduction in space.).
- Does the agency need to pursue co-location or consolidation opportunities in order to be in compliance with the Office of Management and Budget's "Freeze the Footprint" policy? In general, this policy requires agencies to offset any growth in total office and warehouse space with other corresponding reductions in total office or warehouse space, so that there is no net increase in the size of these real property assets. To satisfy this policy, each agency should:
  - Work collaboratively with other agencies and GSA to find opportunities for smarter space usage through co-locations and consolidations;
  - Consider and pursue available co-location opportunities within the Federal real estate inventory, especially those that will result in no net growth of the overall Federal real estate inventory; and
  - Consult with GSA on how to use technology and space management to consolidate, increase occupancy rates in facilities, and eliminate lease arrangements that are not cost or space effective.

#### Suitability of Location

- Is Government-owned space available that may meet the agency's requirements? Could a historic or other federal building meet the requirement and better serve the Government's fiscal, sustainability, and stewardship goals?
- Does the current location comply with locational policies, such as E.O. 12072, and desirable sustainability features such as walkability, and public transit accessibility?
- Does the location still comply with floodplain and wetland policies?

- Is the agency satisfied with the current location? Does the agency wish to pursue a succeeding lease with the current Lessor?
- Does the current Lessor have a good record of past performance regarding heating and air conditioning, janitorial service, maintenance, and alterations?
- What is the condition of the building? (In addition to agency and field office feedback (such as a building evaluation report), determine the condition based on a physical tour, if at all possible—see the section below on the market survey.)

### RLP and Lease Technical Requirements

- Can the existing building or space be altered to meet the current solicitation requirements, with respect to standards such as fire safety, accessibility, sustainability, seismicity, and security criteria?
- Will the client agency be able to continue to perform its mission or will it have to temporarily relocate during any work that is being performed?
- If needed, does the Lessor have adequate swing space available to house the client agency while work is being performed? Remember that swing space may be needed for a variety of reasons, including a new space layout; fire, safety, or accessibility renovations; and/or Energy Independence and Security Act (EISA) energy efficiency/conservation or seismic improvements.
- Will the swing space involve unusual or redundant costs that would not be encountered if the agency were to relocate instead—for example, telecommunications, data, or the physical move? How do these costs affect the cost-benefit analysis?
- Will the incumbent Lessor install cost-effective energy efficiency and conservation improvements? See Chapter 18 of this Leasing Desk Guide for further information on EISA requirements, including details on cost-effective energy efficiency and conservation improvements.
- Will the work need to be done in phases? If so, how will this affect the tenant agency?

### Competitive Advantage

- Is the Government well-positioned to negotiate concessions from the current Lessor with regard to rent, TI allowance, or other lease terms?
- Did you consult with field office representatives or Lease Administration Managers to solicit their knowledge and expertise on post award/lease administration matters?
- Are there advantages to the Government in conducting a full and open competition to meet the agency's requirements?

These factors will help the Leasing Specialist develop a general sense of whether the succeeding or superseding lease model is desired and feasible.

## b. Succeeding/Superseding Decision Tool

Lease reform introduced the use of the Succeeding/Superseding Decision Tool as a proactive approach in performing the due diligence described above for our expiring lease inventory. The decision tool is intended to assist the Leasing Specialist in deciding the appropriate procurement strategy based upon a thorough evaluation and analysis of these factors that are typically reviewed as part of acquisition planning. The tool provides an efficient way to capture and array the information necessary to determine whether a stay-in-place solution is appropriate.

This tool also contains an automated cost-benefit analysis spreadsheet that calculates the aggregate cost difference between the anticipated succeeding lease deal and market alternatives. This analysis can be used both for acquisition planning using preliminary market research and to support the Justification for Other Than Full and Open Competition (see paragraph 12 below for additional details).

## c. Touring the Existing Location

To the maximum extent practicable, before executing a succeeding lease, the Leasing Specialist, Lease Contracting Officer, or designee (such as property manager or broker) will perform due diligence by touring the current lease location. The tour will confirm that the building's condition, accessibility, fire safety features, seismic, energy efficiency/conservation, and other attributes meet current lease standards.

# 7. Occupancy Agreement (OA)

As described in other chapters of this Leasing Desk Guide, GSA sends the tenant agency a draft OA as part of requirements development. Tenant agency signature on the OA is required before PBS enters into a lease contract to confirm the agency's financial commitment to pay the rent according to the terms and conditions stated in the OA.

However, in a succeeding lease situation, where the agency is already occupying the space but has not provided its requirements or is unwilling to sign an OA, the Lease Contracting Officer may have to protect the government's financial interests without the benefit of an executed OA, to avert a holdover tenancy. In such situations, the Lease Contracting Officer should only proceed with awarding a succeeding lease after providing written documentation that carefully weighs the risks and obtaining written approval from the Regional Portfolio Director. A superseding lease, in all scenarios, requires a signed OA, which must be produced before any further commitments.

The following steps will help to protect the Government's legal rights as well as allow the Leasing Specialist flexibility to begin timely follow-on succeeding lease procurement:

- As a general practice for all leases, notify customers **at least** 24 months before lease expiration (36 months for prospectus-level leases), and provide a second and third notification in subsequent months. In the second or third notification, clearly state that if PBS does not receive a specific request to terminate or reduce the requirement at the end of the lease term, it will take action to protect the Government's interest and negotiate either a succeeding lease or other contract action at the most favorable terms the government can acquire.

- This notification also advises the customer that it will be financially obligated to pay rent for the space during the firm term of the succeeding lease or other contract action PBS may deem necessary to legally allow the tenant agency to continue to occupy the space. PBS will negotiate the most appropriate firm term possible. In the absence of instructions from the client agency, GSA will negotiate for the most appropriate terms that it deems to be in the best interest of the Government.
- Lease Contracting Officers must escalate the notification process to the appropriate person in Portfolio and jointly prepare an exception request in the absence of a signed OA.
- As a general practice, in such scenarios PBS will seek to avoid the use of a lease extension or, when an extension offers the most advantageous solution, to minimize its term. The term of a lease extension should rarely exceed 2 years, unless it involves a consolidation of leases or lease construction; see Leasing Desk Guide Chapter 7, Lease Extension.
- As part of this process, PBS re-sends a draft Occupancy Agreement to the agency in an additional attempt to gain its concurrence on the leasing action. It may be useful to send the draft OA to an escalated office within the agency, such as an assistant secretary for operations.
- If an agency has not provided a signed copy of the OA and continues to occupy space, no signed OA is required to finalize that assignment, provided no additional TIs were added and square footage did not increase. PBS must continue to seek signatures for succeeding lease projects. Where no signed OA is required, the proposed OA must include the succeeding lease ad hoc clause. Additional text may also be added after the standard clause for further explanations. If the clause is not included in the proposed OA, a signed OA is required.
- To obtain approval to bill the agency, the Leasing Specialist provides Rent Bill Management (RBM) with an approved exception request to process any action without a signed OA. The following list of documentation is required to support the exception request:
  1. Notification letters;
  2. E-mail confirmation of conversations with an agency official;
  3. Copies of the lease contract;
  4. Occupancy Agreement, and transmittals sent to the agency in an attempt to get its signature; and
  5. Documentation of follow-up attempts to obtain the agency's signature.

## 8. FedBizOpps Posting and Newspaper Advertisements

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FBO postings and Newspaper advertisements for succeeding lease actions differ from those for full and open competition.

GSAM 570 requires that all leases exceeding 10,000 square feet be publicized in FBO. This Leasing Desk Guide chapter establishes ANSI/BOMA Office Area (ABOA) square feet as the appropriate measurement method to apply. Despite that threshold, in order to promote competition to the greatest extent possible and identify all possible alternatives in the market, Lease Contracting Officers may publicize all succeeding lease projects of any dollar value or square footage in <http://www.FBO.gov> or local newspapers if, in the opinion of the Lease Contracting Officer, doing so is necessary to promote competition. The intent is to actively demonstrate that PBS is conducting more than a merely perfunctory effort to finding potential alternative sources of space. At a minimum the notification must:

- Indicate that the Government's lease is expiring.
- Describe the requirement in terms of type and quantity of space.
- Indicate that the Government is interested in considering alternative space if it would be economically advantageous.
- Advise prospective offerors that the Government will consider the relocation costs, including the physical move and the voice and data systems move, when deciding whether it should relocate or pursue a sole-source acquisition.
- Provide a contact person for those interested in providing space to the Government.

### a. FBO Posting for Succeeding Lease

The Leasing Specialist seeks expressions of interest using the FBO combined procurement template shown in Attachment 3 to this chapter and described further in Chapter 2 of the Leasing Desk Guide. The attached template contains the following text, which must be included by the Leasing Specialist or broker to specifically address succeeding lease situations:

**Action:** for FBO postings, insert the following language only for potential sole-source succeeding lease actions. Delete for procurement summary page.

The U.S. Government currently occupies office and related space in a building under lease in [City, State], that will be expiring on [date]. The Government is considering alternative space if economically advantageous. In making this determination, the Government, will consider, among other things, the availability of alternative space that potentially can satisfy the Government's requirements, as well as costs likely to be incurred through relocating, such as physical move costs, replication of tenant improvements and telecommunication infrastructure, and non-productive agency downtime.

If the Leasing Specialist receives no responses for locations that can meet the requirements—for example, the space is outside the delineated area, is too small, or does not meet other requirements of the advertisement—then the Leasing Specialist must nevertheless conduct additional market research (described below) to confirm that no other options exist. If the market research also reveals that no other options exist, the Leasing Specialist can begin to prepare the Justification for Other Than Full and Open Competition. If market research indicates that lease construction would offer a lower-cost alternative and if sufficient time remains in the lease, consult Chapter 14, Lease Construction.

If viable responses are identified, then this information is captured for the cost-benefit analysis (described below) and may be included in a potential market survey.

### **b. “Intent to Award” Advertisement**

There may be rare instances in which an agency's requirements can only be fulfilled by the unique characteristics of one property. For sole-source succeeding leases where the decision to limit competition is mission-driven, not cost-benefit driven, (for example, Transportation Security Administration's requirement to remain on airport property), the FBO posting does not include the succeeding lease language described above. Instead, the Leasing Specialist places an Intent to Award advertisement to clearly communicate our intent to remain at the current location. See Chapter 20 of this desk guide for an example.

## **9. Market Survey**

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As used in Chapter 2 of this Leasing Desk Guide, the term “market survey” refers to the full process of gathering information about and actually visiting specific properties in the market to determine whether suitable property is competitively available and how to satisfy the lease requirement in the most competitive manner. For purposes of obtaining a succeeding or superseding lease, however, the requirement for a market survey is fulfilled through market research, using those resources described under Chapter 2, Part 2 (such as the FBO posting, CoStar, LoopNet, regional listing files, and calls to owners and listing brokers). Through this research, the Leasing Specialist identifies all potential locations with sufficient space and corresponding rental rates.

A building tour of potential locations is not necessary at this stage, nor is it necessary to fill out market survey forms for these alternative locations, unless further cost-benefit analysis points to a possible need for a competitive action. The Leasing Specialist or Lease Contracting Officer documents the results of this research for the file using the Market Survey Analysis and Negotiations Objectives template or a similar document, combining the results of the market research with the negotiation objectives.

Three scenarios are possible at this point:

1. No potentially acceptable locations (other than the existing Lessor) are identified through the advertisement and the market survey. Posting the expressions of interest or FedBizOpps advertisement is not enough; Leasing Specialists must also conduct market research. Both actions are critical steps toward finding potentially acceptable locations. In this situation, a cost-benefit analysis is unnecessary, and the Leasing Specialist should proceed with preparing a Justification to negotiate directly with the current Lessor.

2. Potentially acceptable locations are identified, but the required subsequent cost-benefit analysis indicates that the Government cannot expect to recover relocation costs and duplication of costs through competition. The Leasing Specialist must capture this information for preparing the Justification.
3. Potentially acceptable locations are identified, and the cost-benefit analysis indicates that the Government could recover relocation costs and duplication costs through competition. Under this scenario, the Leasing Specialist must cancel the succeeding lease project and initiate a competitive replacing lease project, touring all potential locations.

## 10. Additional Procurement Resources

In addition to in-house government resources, Leasing Specialists should consider the Automated Advanced Acquisition Program (AAAP) or the National Broker Contract (NBC) in order to compete or process expiring lease transactions. The NBC enables PBS to use broker contractors to provide additional leasing capacity and supplement the work of the Leasing Specialist and Lease Contracting Officer. For more information on NBC refer to Leasing Desk Guide, Chapter 16, National Broker Contract Leases.

The AAAP is a multiple-award platform approach with adaptable technological features to further standardize the lease process, and it leads the commercial real estate industry in improving the delivery of office space to our customer agencies in a cost-effective and timely manner. Additional guidance can be found in Lease Acquisition Circular 2014-01, Automated Advanced Acquisition Program (AAAP).

## 11. Cost-Benefit Analysis

If potentially acceptable locations are identified through the advertisement or market research, a cost-benefit analysis becomes necessary for justifying a decision to pursue a succeeding or superseding lease action. The critical issue in this analysis is to determine whether the agency will recover the costs of relocation and duplication through the lower rents and possible concessions that may be achieved through competition.

A cost-benefit analysis must consider the following factors:

- The lowest rates of other potentially available properties
- Relocation costs for:
  - Moving
  - Telecommunications
  - Alterations amortized over the firm term of the lease

### You cannot skip this step!

Once potentially acceptable locations are identified, the cost-benefit analysis is a critical step in the succeeding lease process.

- Duplication of costs to the Government, (such as for tenant improvements, loss of productivity, and disruptions)
- Other appropriate factors, such as costs to meet lease security standards in the new location versus retrofitting the existing location to meet lease security standards
- For superseding leases, the cost of remaining liability for the firm term on the existing lease, unless a backfill candidate can be identified.

Note that, except as provided above for superseding leases, the cost benefit analysis should be based on the **full** term of the lease, including both the initial “firm” term (the non-cancelable duration) and the “soft” term (any additional years during which the tenant agency may have cancellation rights). The firm and soft terms used for the cost-benefit analysis must be the same for each location being considered.

### a. How to Establish Costs

PBS Leasing Specialists must establish the prices for other potentially available properties by requesting each prospective offeror to provide an informational quotation for standard space for comparison purposes. To establish these prices, PBS realty professionals must:

- a. Provide a general description of the Government's needs that may be accomplished by publishing the requirement in FBO using the succeeding lease language in paragraph 8.a. above. A formal RLP is not required to obtain the informational quotation.
- b. Adjust the prices quoted for standard space for any special requirements. For example, adjust prices appropriately for office space versus holding cells. This adjustment could also be addressed in the tenant improvement budget.
- c. The Leasing Specialist must understand that most rates quoted are not fully serviced (to the government's standards) and must be adjusted to compensate for these differences. For example, fully serviced leases in the market might not include charges for snow removal, grounds maintenance, or common area maintenance as required in the RLP. When reviewing cost proposals, be aware that the private sector's definition of shell is usually what GSA would refer to as “cold dark” space—the foundation and structural work, the roof and all concrete exterior walls, and interior slab flooring—as opposed to the PBS shell definition that GSA typically requires for office space, which is the complete enveloping structure, the base building systems, and the finished common areas that adjoin the tenant areas. This definition, sometimes referred to as “warm lit” space, is detailed in Table 2-2 of the Pricing Desk Guide 4th Edition, Shell Definition. The rate quoted might also not include costs for Government requirements, such as those regarding security, accessibility, fire and life safety, and seismic standards.
- d. For each price quote received, Leasing Specialists must document the following information:
  1. Name and address of the firm solicited (the location must be within the delineated area)
  2. Name of the firm's representative providing the quote
  3. Price quoted
  4. Adjustments made to price

5. Description of the space and services for which the quote is provided
  6. Name of the Government employee soliciting the quotation
  7. Date of the quote
- e. The Leasing Specialist must compare the informational quotations to the present Lessor's price, adjusted to reflect the anticipated price for a succeeding or superseding lease.

## b. Tools and Templates

As stated previously, lease reform introduced the use of the Succeeding/Superseding Decision Tool. The Cost Benefit Analysis (CBA) tab of the Succeeding/Superseding Decision Tool is a nationally accepted tool to complete this requirement. The CBA tab is designed to standardize the method and to provide a summary page of regional cost expenditures used toward a stay in place decision. However, the tool no longer contains references to present value terms and will not refer to them until GSA develops a standardized methodology or tool for estimating move and replication costs.

To facilitate compliance with GSAM 570.402-6, "Cost-benefit analysis," the sample cost-benefit analysis template appearing below incorporates the GSAM cost-benefit analysis requirements for succeeding leases. Leasing Specialists may also use the automated cost-benefit analysis spreadsheet included with the Succeeding/Superseding Decision Tool, updating the market information as necessary to reflect any subsequent information obtained from the FBO posting or market research. (The purpose of the analysis in the early procurement stages as part of the Decision Tool is to ascertain in general terms whether a succeeding or superseding lease strategy is economically viable. Once alternative sources are identified and market research steps are completed, the template can be used in a more rigorous approach to support a Justification, described in further detail below.)

The reason for a cost-benefit analysis is to determine whether the Government can expect to recover relocation costs and duplication of costs through competition. What Lease Contracting Officers and regional decision-makers must determine is whether the analysis clearly supports a non-competitive Justification.

When performing the comparison, the Government should not just rely upon whether the analysis shows a projected savings with remaining at the current location, but also upon the degree of savings relative to the cost of the project. For example, a projected cost savings of \$100,000 for a contract with an aggregate value of \$500,000 reflects a stronger argument for a sole-source succeeding or superseding lease than a projected savings of \$200,000 for a contract with an aggregate value of \$3 million. If the cost-benefit analysis does not clearly support a noncompetitive Justification, the lease must be competed.

In summary, if a cost-benefit analysis fails to make a strong economic case for negotiating with only the current Lessor, the Leasing Specialist must pursue a full and open competition.

### Sample “Cost-Benefit Analysis” Template

Note: The [agency] will commit to a lease term of [number—e.g., 5] years. The full term of the lease to be negotiated will be [number—e.g., 5] consistent with [agency] commitment, and the associated tenant improvements will be amortized over [number—e.g., 5].

*Example: Acquisition of [...] ANSI/BOMA Office Area (ABOA) Square Feet, 5-Year (Full Term) Analysis*

Note: TI allowances are calculated only on ABOA square feet.

Cost-benefit Analysis Acquisition of 25,600 ANSI/BOMA Office Area (ABOA) Square Feet 5-Year (Full Term) Analysis:		
	Present Location	Alternate Location
5-year total rent/annual ABOA rate (shell and operating costs only)	\$3,072,000/\$24	\$ 2,398,720/\$18.74
New amortized tenant improvements This estimate is developed by GSA working with the customer agency and reflects the cost of the tenant improvements (general and customization allowance) under the new lease. In this example, the agency has fewer new tenant improvements to be constructed at the present location because it will be able to reuse many of the existing tenant improvements already in place under the current expiring lease. (These are out-of-pocket costs and not the depreciated value of existing tenant improvements.) <sup>a</sup>	\$257,280	\$1,137,920
Cost of physical move. <sup>b</sup> Include the following information in the estimate: <ul style="list-style-type: none"> <li>• Number of people moving</li> <li>• Number of cabinets or estimate 2 cabinets/person</li> <li>• Number of boxes (or number of boxes per person)</li> <li>• Number of existing workstations to disassemble, move, and reassemble</li> <li>• Move freestanding furniture (\$/ABOA SF; # of rooms)</li> <li>• Temporary contingency storage fees per workstation per month, if appropriate</li> <li>• Furniture project management fees</li> <li>• Space planning project management fees</li> </ul>	\$5,029	\$21,604
Voice and data move. <sup>c</sup> Includes both move and replacement costs, since moves sometimes trigger replacement of equipment that otherwise would have been used for a longer time. Include the following elements in the estimate: <ul style="list-style-type: none"> <li>• Purchase and install new ISDN phone system</li> <li>• Purchase new handsets</li> <li>• New voice/data ISDN line</li> </ul>	\$10,057	\$68,974

Cost-benefit Analysis Acquisition of 25,600 ANSI/BOMA Office Area (ABOA) Square Feet 5-Year (Full Term) Analysis:		
	Present Location	Alternate Location
<ul style="list-style-type: none"> <li>Relocate existing voice/data ISDN line (including phones in conference rooms, lines for fax machines, etc.)</li> <li>Purchase and install new analog phone system</li> <li>New voice/data analog line (fax)</li> <li>Relocate existing voice/data analog line (fax)</li> <li>Purchase new switch</li> <li>Purchase new phones and voicemail system</li> <li>Purchase new LAN printer (data line)</li> <li>Relocate existing LAN printer (data line)</li> <li>Purchase and install new computer equipment</li> <li>Relocate existing computer equipment</li> <li>Relocate computer rooms (# rooms \$/ABOA SF/room)</li> <li>Telecommunications project management fees</li> </ul>		
Administrative time. This should include the amount of time spent packing and unpacking boxes at workstations and any other nonproductive work time waiting for the setup of workstations.	\$0	\$15,000
Duplication of Reimbursable Work Authorization (RWA) alterations (above agency customization tier) This estimate is developed by GSA working with the customer agency and reflects the cost to replicate existing RWA alterations in the event of a move to a new location.	\$0	\$410,702
Temporary storage fees. Include contingency storage fees per workstation per month, if appropriate	\$0	\$0
Total 5-year cost/annual ABOA rate (no escalations included)	\$3,344,366/\$26.13	\$4,052,920/\$31.66
Remaining existing lease liability not backfilled (applies when comparing superseding against replacement lease only)		
Full term lease savings	\$708,554	
Estimate the costs of relocation by conducting market research, which involves: <ul style="list-style-type: none"> <li>Reviewing PBS and Federal Acquisition Service client agency costs for recent relocation services.</li> <li>Asking private companies their costs for recent relocations.</li> <li>Searching for printed and online advertisements for relocation services with quoted rates.</li> <li>Calling service providers for quoted rates.</li> </ul>		
<sup>a</sup> Costs of tenant improvements: <a href="#">[Identify source of supporting data here]</a>		



Cost-benefit Analysis		
Acquisition of 25,600 ANSI/BOMA Office Area (ABOA) Square Feet		
5-Year (Full Term) Analysis:		
	Present Location	Alternate Location
<sup>b</sup> Costs of physical move: <a href="#">[Identify source of supporting data here]</a>		
<sup>c</sup> Costs of voice and data move: <a href="#">[Identify source of supporting data here]</a>		

## 12. Justification for Other Than Full and Open Competition (Justification)

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A Justification provides the basis for the Leasing Specialist to negotiate with a single source—in this context, the existing Lessor—without full and open competition. The level of approval required increases as the dollar value escalates. The Justification template for succeeding and superseding leases is attached. A Justification that is not based upon a mission-related rationale or lack of available alternatives must incorporate the cost-benefit analysis. Negotiations with the Lessor must not be conducted until the Justification is approved by the appropriate authority. The Lease Contracting Officer will closely coordinate with the Office of Regional Counsel on drafting the actual Justification. The sample template in Attachment 1 is only for illustration and must not be used without careful consideration of the facts in each case.

Note that, once a succeeding or superseding lease has been awarded, a redacted version of the approved Justification must be posted on FedBizOpps within 14 days after lease award. (Attachment 2 to this chapter shows the information elements that are exempt from disclosure under the Freedom of Information Act.) In the case of a lease award permitted on the basis of unusual and compelling urgency, the Justification must be posted within 30 days after lease award.

Before posting, Lease Contracting Officers, in consultation with the Regional Counsel's Office, must screen the Justification to remove all contractor proprietary data, references, and citations as necessary to protect the proprietary data in accordance with the Freedom of Information Act (FOIA). Lease Contracting Officers must be guided by the exemptions to disclosure of information contained in FOIA (5 U.S.C. 552) and the prohibitions against disclosure in determining whether other data should be removed.

## 13. Request for Lease Proposals (RLP) Package and Offer Forms

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As discussed under paragraph 3, lease reform introduced the Succeeding/Superseding Lease Model, which developed templates specifically tailored for a succeeding or superseding lease action. Three of these templates—the RLP (GSA Form R102), the Lease (GSA Form L202), and the Proposal to Lease Space (GSA Form 1364D)—clearly communicate the Government's intent to negotiate a sole-source succeeding or superseding lease with the current Lessor. This model also assumes that most of the existing building conditions are acceptable in an as-is condition, except shell standards such as accessibility, fire and life safety, cost-effective energy efficiency improvements (upgrades) and seismic safety; and it takes a turnkey approach to defining any new required improvements. When issuing an RLP package using Forms R102 and L202, the Leasing Specialist should also use the model's Proposal to Lease Space GSA Form 1364D, which identifies the current lease terms and conditions (filled out by the Leasing Specialist before issuance).

GSA Form 1364D also provides for the incumbent Lessor to itemize all energy efficiency and conservation improvements to be made that would be cost-effective over the proposed new firm term of the lease. The leasing specialist must verify the completeness of these improvements by the incumbent Lessor seeking the succeeding or superseding lease. Should the incumbent

Lessor not commit to make all cost-effective energy efficiency and conservation improvements as part of a succeeding or superseding lease then they are technically ineligible for a succeeding or superseding lease.

Note that a succeeding or superseding lease does not require use of the tailored documents available in the Succeeding/Superseding Lease RLP and Lease model to be considered a succeeding lease. It may use other models as well to accomplish the same function. For example, in instances where the anticipated build-out warrants including a TI allowance and full specifications, or when disclosure to the current Lessor imposes an undue financial risk upon the Government, the Leasing Specialist should instead use the Standard Model RLP (R101C), Lease (L201C), and Proposal to Lease Space (1364C-STANDARD).

If the procurement becomes a full and open competition, the Leasing Specialist can use the modified TI paragraph in the Standard RLP to use a lower TI allowance for the current Lessor than required of the other Offerors.

### a. Seismic Requirements

Appendix G of this desk guide outlines the procedures for seismic safety in leased buildings.

If the currently leased building is in the green area of the map shown in the RLP (low and very low seismicity), the seismic requirements of RP 8 do not apply to the succeeding or superseding lease transaction, and the Leasing Specialist should delete seismic paragraphs from the RLP package.

If the currently leased building is in the yellow area of the map (with planned federally occupied leases totaling 10,000 ABOA SF and above) or the red area (total building size 3,000 ABOA SF and above), then:

- Review the existing lease file to determine whether there is a certification from the previous procurement. If the file contains a certification under RP 6, then this certification suffices as seismic compliance for succeeding and superseding leases. Note: It is PBS's general policy that all certifications done under RP 6 (ASCE 31) are acceptable under RP 8. The RP 6 provision grandfathering RP 4 is not considered evidence of seismic compliance in any region.
- If a prior certification does not exist, the Leasing Specialist must obtain evidence of seismic compliance from the Lessor. If the incumbent cannot or will not provide evidence of compliance with RP 6 (ASCE 31) or later standards, then the acquisition strategy must be changed to full and open competition, including the current Lessor in the competition. The Lessor's building will then be evaluated in accordance with the provisions of the RLP seismic provisions.

### b. Security Requirements

The Federal Protective Service (FPS) is the security organization that is legally and statutorily responsible for the security of GSA's leased space. After GSA leases a space, the FPS performs an in-lease assessment. By policy, the FPS must complete additional in-lease security assessments according to the following schedule:

- Facility Security Level (FSL) I–II: Reviewed by FPS every 5 years

- FSL III–IV: Reviewed by FPS every 3 years.

Once established, the facility security level (FSL) determination document is the ISC security standard for GSA's leased space. However, succeeding and superseding leases that are established through other than full and open competition, the requirement to change the security countermeasures will not apply unless there is a change in tenant(s) or mission. Otherwise, for these types of leasing actions the FSL determinations and risk assessments will continue to be done in accordance with the schedule established for the facility.

Replacement actions triggered by a change in tenants or mission, or major construction to the leased premises for the Government's continued occupancy at the existing location and achieved through full and open competition must consult with FPS to determine if the past assessment or a newly completed assessment is required.

Since security items may have been installed as part of the original lease or as lease alterations, there is no need to recreate the countermeasures installed in the original lease, but they still need to be maintained. Therefore the use of the standard paragraphs for a particular FSL may need to be adjusted if there are any additional security countermeasures already installed.

With either the past assessments or a newly completed assessment in hand, the Leasing Specialist or Lease Contracting Officer consults with FPS and the tenant agency to determine whether any additional security countermeasures are required, needed, and affordable or if the current items have outlived their useful lives. This is done before completing the final requirements so that any deficiencies can be included in the negotiation of the succeeding or superseding lease or a fully competed lease transaction.

In those replacement actions triggered by a change in tenants or mission, the FPS inspector provides the recommendation for the items and the standards for them. Except for countermeasures being provided by FPS, these items must be included in the succeeding or superseding lease as part of the requested alterations and amortized as new building-specific amortized capital (BSAC). Leasing Specialists are reminded that BSAC is defined as any physical security measure that is either part of the building or attached to the building and not easily removed.

The FPS inspector reviews the installation to verify the installation and functionality of countermeasures and prepare a final acceptance report.

The lease contract must include the set of clauses for the pertinent FSL with additions or deletions as appropriate for the space.

Refer to Chapter 19 of this Leasing Desk Guide for information on lease security requirements for new and replacing leases.

### c. Historic Preservation Act Review Process

The Leasing Specialist must consult the GSA Regional Historic Preservation Officer (RHPO) to determine whether the review process of Section 106 of the National Historic Preservation Act applies. For the most part, succeeding or superseding leases in non-historic buildings or in historic buildings without substantial TIs will not result in an adverse impact and therefore will not be subject to the review process. The Leasing Specialist must include documentation related to this determination in the lease file.

However, if in consultation with the RHPO the Leasing Specialist is informed that the proposed project/lease is likely to pose an adverse impact to historic properties, the Leasing Specialist must develop a Preservation Review Execution Plan in consultation with the RHPO to ensure a documented process for compliance with Section 106.

## 14. Negotiations and Fair and Reasonable Determination

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The following points are valuable to remember in conducting negotiations with the current Lessor and making a determination of fair and reasonable pricing.

- Even in a sole-source negotiation for a succeeding or superseding lease, the Government retains significant leverage. Keep in mind that the Lessor has several incentives to negotiate productively. The Lessor will face a significant loss in cash flow if the Government relocates, in terms of lost rent and the need to spend money to attract another tenant.
- It may be useful to remind the Lessor that the Government can decide to stop sole-source negotiations and follow a full and open competition if the Lease Contracting Officer cannot reach a satisfactory agreement with the Lessor. Make this point especially if the Lessor is attempting to negotiate above-market rates or seeking other concessions from the Government in the terms of the lease.
- Do not award a bad lease—one that obligates the Government to pay above-market rent or accede to other detrimental contract terms—for expediency or administrative convenience. The short-term advantages are rarely worth the long-term costs.
- Remember to use the research and information tools available to you—such as REIS, Bullseye, CoStar, and other resources—to strengthen your negotiating position and formulate a confident assessment of fair and reasonable rental terms.
- If TI is shown as a separate rental component, then be sure to have an Independent Government Estimate (IGE) to confirm that the TI component is fair and reasonable. This is especially important in a turnkey lease in sole-source procurement, since there is no competition against which to compare the TI amount or its amortization rate.

## 15. Final Certification of Funds

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As with a new or replacing lease, the Leasing Specialist must request certification of Budget Activity 53 funds from the authorized budget official for a succeeding or superseding lease. The certification must cover the square footage, effective date, and total annual rent consistent with the lease document. When funds are certified, the Budget Office will provide the Leasing Specialist with an approved final certification of funding document, often referred to as a “BA 53 fundcert.”

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## 16. Final Tips

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PBS Leasing Specialists and support contractors must include the most recent lease contract paragraphs in all succeeding and superseding leases, unless they are waived or determined to be not applicable according to the contract terms.

Succeeding and superseding leases must also comply with all budget scorekeeping rules and prospectus requirements for succeeding and superseding lease actions. These scoring requirements are addressed in more detail in Chapter 11, Prospectus-Level Leases, and Appendix F, Determination of Operating or Capital Lease Classification for Budget Scoring.

If the customer has requirements and plans to use a Reimbursable Work Authorization (RWA) to fund alterations, the Leasing Specialist must follow the procedures detailed in Chapter 2, Part 6, and other applicable RWA policies, including the RWA National Policy Document.

Because of the sole-source nature of a succeeding/superseding procurement and the lack of competition, be certain to verify that the overall costs of continued occupancy in the space are fair and reasonable.



## Attachment 1: Sample Justification for Other Than Full and Open Competition, Succeeding Lease

U.S. General Services Administration

GSA Region [ ]

[Name of Service Center/Division]

### JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

PROJECT NUMBER: [Rexus Project Number]

Agency Name: [Agency]

#### 1. NATURE AND/OR DESCRIPTION OF ACTION BEING APPROVED.

The General Services Administration currently leases [amount of space] ABOA/[amount of space] rentable square feet (RSF) of office space at [street address, city, state] under lease number GS-[ ] for the [Agency]. The current lease expires [date]. Approval is requested to negotiate a succeeding lease with the incumbent Lessor without full and open competition for continued occupancy at this leased location.

#### 2. DESCRIPTION OF THE SUPPLIES OR SERVICES REQUIRED TO MEET THE AGENCY'S NEEDS (INCLUDING ESTIMATED VALUE).

[Agency] submitted a continuing need letter on [date] for [amount of space] rentable square feet of office and related space. To satisfy the [agency] mission requirements, the facility must be within a walkable distance of the [complete sentence, as appropriate].

This requirement is for [amount of space] ABOA/[amount of space] RSF of space for a [years of agency lease term requirement]-year term to commence on [date]. The estimated annual cost of this lease is [dollar amount based on information quotes received in response to advertisement] BOMA rentable square feet per year for an annual cost of [dollar amount based on information quotes received in response to advertisement] and a total contract value of [dollar figure based on information quotes received in response to advertisement]. The delineated area is [identify specific delineated area].

#### 3. IDENTIFICATION OF STATUTORY AUTHORITY PERMITTING OTHER THAN FULL AND OPEN COMPETITION.

41 U.S.C. 3304(a)(1): Only one responsible source and no other supplies or services will satisfy agency requirements.

#### 4. DEMONSTRATION THAT THE PROPOSED CONTRACTOR'S UNIQUE QUALIFICATIONS OR NATURE OF THE ACQUISITION REQUIRES THE USE OF THE AUTHORITY CITED.



### Attachment 1: Sample Justification for Other Than Full and Open Competition, Succeeding Lease ↗

GSAM 570.402-5 allows for negotiation with the incumbent Lessor when a cost-benefit analysis shows that the Government cannot expect to recover relocation and duplication costs through competition. PBS placed an advertisement conforming to GSAM 570.402-2 on the Federal Business Opportunities Web site (fedbizopps.gov) on [date advertisement was posted] and received [number of expressions of interest received] responses. The incumbent Lessor's expression of interest indicated that the rate would be [dollar amount] RSF. The interested party that provided the lowest cost quoted a rate of [dollar amount] in its expression of interest.

Award to other than the current Lessor would require relocation of the entire requirement and would cause [Agency Name] to incur move and replication costs that would not be recovered through competition. [Provide a brief summary of any special use space such as a Sensitive Compartmented Information Facility (SCIF), Heating, Ventilation, and Air Conditioning (HVAC) enhanced conference rooms with video teleconferencing capabilities, special security requirements, etc., that would all have to be replicated if they were to move.]

#### [Insert Cost-Benefit Analysis]

The cost of relocating [Agency Name] using the low cost quote exceeds the cost of remaining at [current PBS leased location]. The savings to the Government is [dollar amount]. Based on this cost-benefit analysis, the Government cannot expect to recover relocation and duplication costs through competition. Therefore, the Government intends to negotiate a succeeding lease and remain at its current location.

#### 5. DESCRIPTION OF EFFORTS MADE TO ENSURE THAT OFFERS ARE SOLICITED FROM AS MANY POTENTIAL SOURCES AS IS PRACTICABLE.

In [date of market survey], [national broker contractor name or PBS] conducted a market survey and identified four potentially acceptable locations (three plus the incumbent) that might meet the agency's needs within the delineated area. [Provide a brief summary of the potentially acceptable locations and their ability to meet the Government's requirements.] In addition, an advertisement was placed in FedBizOpps on [date of advertisement]. PBS received only [number of expressions of interest received] responses, which are:

[incumbent]
[other]

#### 6. DEMONSTRATION BY THE CONTRACTING OFFICER THAT THE ANTICIPATED COST TO THE GOVERNMENT WILL BE FAIR AND REASONABLE.

In accordance with Federal Acquisition Regulation (FAR) 6.303-2(a) (7), the Contracting Officer determines by certifying this document that the anticipated cost to the Government of [dollar figure]/RSF for the entire requirement is fair and reasonable.

Recent market surveys conducted by [national broker contractor name or PBS] in [city], [state] showed the rental rate within the delineated area ranges from [identify rental rate ranges quoted during market survey] per RSF.

#### 7. DESCRIPTION OF MARKET RESEARCH CONDUCTED AND THE RESULTS.

**Attachment 1: Sample Justification for Other Than Full and Open Competition,  
Succeeding Lease**

In [date of market survey], [national broker contractor name or PBS] conducted a market survey that identified the following four locations including the incumbent:

Address	Asking Full Service Rental Rate

**Figure 1: Market Survey Comparables**

8. OTHER FACTS SUPPORTING USE OF OTHER THAN FULL AND OPEN COMPETITION.

9. LIST OF SOURCES, IF ANY, THAT EXPRESSED, IN WRITING, AN INTEREST IN THE ACQUISITION.


10. STATEMENT OF ACTIONS, IF ANY, THE AGENCY MAY TAKE TO REMOVE OR OVERCOME ANY BARRIERS TO COMPETITION BEFORE ANY SUBSEQUENT ACQUISITION.

Consistent with the Competition in Contracting Act, full and open competition will be undertaken in future requirements for [agency name and location], as future opportunities are available.

11. CONTRACTING OFFICER CERTIFICATION.

By signature on this Justification for Other than Full and Open Competition, the Lease Contracting Officer certifies that the award of a succeeding lease of [amount of space] RSF is in the Government's best interest and that this Justification is accurate and complete to the best of the Lease Contracting Officer's knowledge and belief.

\_\_\_\_\_ Date \_\_\_\_\_

[Name], Lease Contracting Officer



Attachment 1: Sample Justification for Other Than Full and Open Competition,  
Succeeding Lease ↗

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12. TECHNICAL REQUIREMENTS PERSONNEL CERTIFICATION

I certify that the supporting data used to form the basis of this Justification is complete and accurate to the best of my knowledge and belief.

\_\_\_\_\_ Date \_\_\_\_\_

[Name], Leasing Specialist

**See FAR 6.304 for appropriate signature threshold levels.**



## Attachment 2: Sample Redactions in Justification

### Sample redactions in Justification

U.S. General Services Administration

GSA Region [ ]

[Name of Service Center/Division]

#### JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

PROJECT NUMBER: [Rexus Project Number]

Agency Name: [Agency]

The agency name may be redacted if the agency is a law enforcement agency and so requests - Exemption (b)(7)

##### 1. NATURE AND/OR DESCRIPTION OF ACTION BEING APPROVED.

The General Services Administration currently leases [amount of space] ABOA/[amount of space] rentable square feet (RSF) of office space at [street address, city, state] under lease number GS-[ ] for the [Agency]. The current lease expires [date]. Approval is requested to negotiate a succeeding lease with the incumbent Lessor without full and open competition for continued occupancy at this leased location.

##### 2. DESCRIPTION OF THE SUPPLIES OR SERVICES REQUIRED TO MEET THE AGENCY'S NEEDS (INCLUDING ESTIMATED VALUE).

[Agency] submitted a continuing need letter on [date] for [amount of space] rentable square feet of office and related space. To satisfy the [agency] mission requirements, the facility must be within a walkable distance of the [complete sentence, as appropriate].

This requirement is for [amount of space] ABOA/[amount of space] RSF of space for a [years of agency lease term requirement]-year term to commence on [date]. The estimated annual cost of this lease is [dollar amount based on information quotes received in response to advertisement] BOMA rentable square feet per year for an annual cost of [dollar amount based on information quotes received in response to advertisement] and a total contract value of [dollar figure based on information quotes received in response to advertisement]. The delineated area is [identify specific delineated area].

The estimated cost is protected - Exemption (b)(5)

##### 3. IDENTIFICATION OF STATUTORY AUTHORITY PERMITTING OTHER THAN FULL AND OPEN COMPETITION.

41 U.S.C. 3304(a)(1): Only one responsible source and no other supplies or services will satisfy agency requirements.

##### 4. DEMONSTRATION THAT THE PROPOSED CONTRACTOR'S UNIQUE QUALIFICATIONS OR NATURE OF THE ACQUISITION REQUIRES THE USE OF THE AUTHORITY CITED.

GSAM 570.402-5 allows for negotiation with the incumbent Lessor when a cost-benefit analysis shows that the Government cannot expect to recover relocation and duplication costs through competition. PBS placed an advertisement conforming to GSAM 570.402-2 on the Federal Business Opportunities Web site (fedbizopps.gov) on [date advertisement was posted] and received [number of expressions of interest received] responses. The incumbent Lessor's expression of interest indicated that the rate would be [dollar amount] RSF. The interested party that provided the lowest cost quoted a rate of [dollar amount] in its expression of interest.

The offered amount is protected - Exemption (b)(4)

The agency security requirements are protected - Exemption (b)(7)

Award to other than the current Lessor would require relocation of the entire requirement and would cause [Agency Name] to incur move and replication costs that would not be recovered through competition. [Provide a brief summary of any special use space such as a Sensitive Compartmented Information Facility (SCIF), Heating, Ventilation, and Air Conditioning (HVAC) enhanced conference

The agency security requirements are protected - Exemption (b)(7)

rooms with video teleconferencing capabilities, special security requirements, etc., that would all have to be replicated if they were to move.]

[Insert Cost-Benefit Analysis]

The agency name may be redacted if the agency is a law enforcement agency and so requests - Exemption (b)(7)

The cost of relocating [Agency Name] using the low cost quote exceeds the cost of remaining at [current PBS leased location]. The savings to the Government is [dollar amount]. Based on this cost-benefit analysis, the Government cannot expect to recover relocation and duplication costs through competition. Therefore, the Government intends to negotiate a succeeding lease and remain at its current location.

Estimated savings amount is protected - Exemption (b)(5)

**5. DESCRIPTION OF EFFORTS MADE TO ENSURE THAT OFFERS ARE SOLICITED FROM AS MANY POTENTIAL SOURCES AS IS PRACTICABLE.**

In [date of market survey], [national broker contractor company name or PBS] conducted a market survey and identified four potentially acceptable locations (three plus the incumbent) that might meet the agency's needs within the delineated area. [Provide a brief summary of the potentially acceptable locations and their ability to meet the Government's requirements.] In addition, an advertisement was placed in FedBizOpps on [date of advertisement]. PBS received only [number of expressions of interest received] responses, which are:

[incumbent]
[other]

**6. DEMONSTRATION BY THE CONTRACTING OFFICER THAT THE ANTICIPATED COST TO THE GOVERNMENT WILL BE FAIR AND REASONABLE.**

In accordance with Federal Acquisition Regulation (FAR) 6.303-2(a) (7), the Contracting Officer determines by certifying this document that the anticipated cost to the Government of [dollar figure]/RSF for the entire requirement is fair and reasonable.

The estimated cost is protected - Exemption (b)(5)

Recent market surveys conducted by [national broker contractor name or PBS] in [city], [state] showed the rental rate within the delineated area ranges from [identify rental rate ranges quoted during market survey] per RSF.

**7. DESCRIPTION OF MARKET RESEARCH CONDUCTED AND THE RESULTS.**

In [date of market survey], [national broker contractor name or PBS] conducted a market survey that identified the following four locations including the incumbent:

Address	Asking Full Service Rental Rate

Asking rent rates are protected - Exemption (b)(4)

**Figure 1: Market Survey Comparables**



8. OTHER FACTS SUPPORTING USE OF OTHER THAN FULL AND OPEN COMPETITION.

9. LIST OF SOURCES, IF ANY, THAT EXPRESSED, IN WRITING, AN INTEREST IN THE ACQUISITION.


10. STATEMENT OF ACTIONS, IF ANY, THE AGENCY MAY TAKE TO REMOVE OR OVERCOME ANY BARRIERS TO COMPETITION BEFORE ANY SUBSEQUENT ACQUISITION.

The agency name and location may be redacted if the agency is a law enforcement agency and so requests - Exemption (b)(7)

Consistent with the Competition in Contracting Act, full and open competition will be undertaken in future requirements for [agency name and location], as future opportunities are available.

11. CONTRACTING OFFICER CERTIFICATION.

By signature on this Justification for Other than Full and Open Competition, the Lease Contracting Officer certifies that the award of a succeeding lease of [amount of space] RSF is in the Government's best interest and that this Justification is accurate and complete to the best of the Lease Contracting Officer's knowledge and belief.

\_\_\_\_\_ Date \_\_\_\_\_

[Name], Lease Contracting Officer

12. TECHNICAL REQUIREMENTS PERSONNEL CERTIFICATION

I certify that the supporting data used to form the basis of this Justification is complete and accurate to the best of my knowledge and belief.

\_\_\_\_\_ Date \_\_\_\_\_

[Name], Leasing Specialist

**See FAR 6.304 for appropriate signature threshold levels.**



## Attachment 3: Combined Procurement Template



GSA Public Buildings Service

### U.S. GOVERNMENT

General Services Administration (GSA) seeks to lease the following space:

#### MINIMUM REQUIREMENTS

State: [.....]  
City: [.....]  
Delineated Area: [.....]  
Minimum Sq. Ft. (ABOA): [.....]  
Maximum Sq. Ft. (ABOA): [.....]  
Space Type: [Office, Warehouse, Retail, Other]  
Parking Spaces (Total): [.....]  
Parking Spaces (Surface): [.....]  
Parking Spaces (Structured): [.....]  
Parking Spaces (Reserved): [.....]  
Full Term: [.....]  
Firm Term: [.....]  
Option Term: [.....]  
Additional Requirements: [.....]

**ACTION:** CHOOSE WHETHER OR NOT A FULLY SERVICED LEASE IS REQUIRED. ALSO CHOOSE 100 YEAR FLOODPLAIN UNLESS REQUIREMENT IS IDENTIFIED BY AGENCY AS A CRITICAL ACTION.

Offered space must meet Government requirements for fire safety, accessibility, seismic and sustainability standards per the terms of the Lease. A fully serviced lease [is/is not] required. Offered space shall not be in the [100/500] year flood plain.

#### USE FOLLOWING LANGUAGE FOR SUCCEEDING LEASES

**ACTION:** FOR FBO POSTINGS, INSERT THE FOLLOWING LANGUAGE ONLY FOR POTENTIAL SOLE SOURCE SUCCEEDING LEASE ACTIONS. DELETE FOR PROCUREMENT SUMMARY PAGE.

The U.S. Government currently occupies office and related space in a building under lease in [city, State], that will be expiring. The Government is considering alternative space if economically advantageous. In making this determination, the Government, will consider, among other things, the availability of alternative space that potentially can satisfy the Government's requirements, as well as costs likely to be incurred through relocating, such as physical move costs,

COMBINED FEDBIZOPPS AND PROCUREMENT SUMMARY PAGE  
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replication of tenant improvements and telecommunication infrastructure, and non-productive agency downtime.

**ACTION:** FOR FBO POSTINGS, DELETE "OFFERS DUE;" FOR PROCUREMENT SUMMARY, KEEP "OFFERS DUE" AND DELETE "(ESTIMATED)" FROM DATES.

**Expressions of Interest Due:** [.....]

**Market Survey (Estimated):** [.....]

**Offers Due:** [.....]

**Occupancy (Estimated):** [.....]

**Send Expressions of Interest to:**

Name/Title: [.....]

Address: [.....]

Office/Fax: [.....]

Email Address: [.....]

**Government Contact(s)**

Lease Contracting Officer: [.....]

Leasing Specialist: [.....]

Broker: [.....]